

## Attorneys for Debtor in Possession

In re

) Case No. 18-03197-11

GIGA WATT, INC.,

) Chapter 11

Debtor.

**) DEBTOR'S RESPONSE TO  
 ) MOTION TO APPOINT  
 ) CHAPTER 11 TRUSTEE**

) Hearing:

) DATE: January 17, 2019

) TIME: 1:00 p.m.

1 Giga Watt, Inc., the debtor and debtor in possession herein (the “Debtor”),  
2 respectfully submits this objection (the “Objection”) to that certain *Motion for*  
3 *Chapter 11 Trustee* [Doc. No. 105] filed by the unsecured creditor’s committee  
4 (“UCC”).

5 I.

6 **STATEMENT OF FACTS**

7 1. The Debtor commenced this case by filing a voluntary petition under  
8 Chapter 11 of 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”) on November 19,  
9 2018 (the “Petition Date”).

10 2. The Debtor is currently unable to operate until either investment or a  
11 loan is obtained to cure past due payments and assume leases.

12 3. The Debtor is committed to appointing a Chief Restructuring Officer,  
13 answerable to the Court, but still allowing limited involvement by the shareholders.

14 4. The CRO would have control of the Debtor’s activities, control of a  
15 Third Party Dashboard, and control of Revenue and disbursal of funds.

16 5. The existence of the CRO would still allow involvement from the  
17 Russian Team, which developed and maintain the proprietary systems that the  
18 Debtor developed and uses in its business.

19  
20 II.

21 **DISCUSSION**

22 **The Russian Team is essential to Continued Operations, and will likely**  
23 **not participate with a Chapter 11 Trustee.**

24 A trustee should be appointed “when to do so would serve the parties’ and  
25 estate’s interests.” *In re Sharon Steel Corp.*, 871 F.2d 1217, 1226 (3<sup>rd</sup> Cir. 1989).  
26 According to the UCC motion, the committee wants the company to continue to  
27 operate as an ongoing entity, where it has more value.

1 Operating as an ongoing entity would require, as set forth in the Declaration  
2 of Andrey Kuzenny, participation of what is called the "Russian Team". As set  
3 forth in the declaration, and as Mr. Kuzenny testified at the 341 meeting of  
4 creditors, the participation of the Russian Team is necessary for successful  
5 continue operation. The Russian Team developed the necessary software to  
6 operate the business, and know the means to maintain it. As set forth by Mr.  
7 Kuzenny, their participation is highly unlikely if a Chapter 11 Trustee is appointed.

8 A reasonable alternative to a Chapter 11 Trustee is a Chief Restructuring  
9 Officer ("CRO"). The CRO could allow limited involvement by the current  
10 management, while ensuring the continuing participation of the Russia Team. The  
11 CRO could be in charge of all operations, and responsible for reporting to the  
12 Court with regard to revenue, product mined, and overall operations. The CRO  
13 would also be in charge of a third party dashboard, and remove access to the mined  
14 cryptocurrency from any other individuals. Such an alternative arrangement would  
15 allow present, ongoing operations to continue, and "would serve the parties' and  
16 estate's interests." The Debtor would support such an arrangement.


17 **III.**

18 **CONCLUSION**

19 **WHEREFORE**, the Trustee respectfully requests that this Court enter an  
20 order denying the Unsecured Creditors' Committees Motion in its entirety, and  
21 alternatively allow appointment of a Chief Restructuring Officer and further relief  
22 as the Court deems just and proper.

23 Dated: January 17, 2019

WINSTON & CASHATT, LAWYERS

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25 By:   
26 TIMOTHY R. FISCHER  
27 Attorneys for Debtor In Possession  
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